IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 15832 of 2005(I)

EP.588/2003 IN O.S.588/1998 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

DR. SANTHAKUMAR, S/O.RAMAKRISHNAN,
NARAYANA VILASAM, NADATHARA, ERAVIMANGALAM,
THRISSUR.

BY ADV. SRI.K.A.SREEJITH
SRI.JOSE MECHERY

RESPONDENT:

THE CATHOLIC SYRIAN BANK LTD.,
KUTTANALLOOR BRANCH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.15832/05

APPENDIX

PETITIONER'S EXTS:

Ext.P1 – TRUE COPY OF COUNTER FILED BY PETR. IN THE E.P.

Ext.P2 – TRUE COPY OF PROCLAMATION.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.15832 OF 2005

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DATED THIS THE 5TH JUNE, 2007

J U D G M E N T

This Writ Petition is posted as defective on the reason that the respondent-Bank has not been served with notice.

2. The order of the execution court settling the draft proclamation for sale submitted by the bank and ordering sale is under challenge in this proceeding under Article 227 of the Constitution of India. It is clear from Ext.P2 sale proclamation that the total amount due as on that date under the decree which was a mortgage decree is Rs.2,54,092/-. This Court became inclined to grant stay only on condition that the petitioner pays a sum of Rs.50,000/- to the respondent-bank within two weeks from 27.5.2005. Mr.K.A.Sreejith, learned counsel for the petitioner has asserted before me that the above payment was readily made by the petitioner. According to the learned counsel, subsequent payments also have been made.

3. The only ground which is seen raised in the Writ Petition is that there has been gross undervaluation in the matter of the sale proclamation. It will suffice if a small portion of the properties is sold. The properties, I find, are two items. The petitioner has a complaint that the learned Subordinate Judge did not allow his application for

issuing a commission for assessing the correct market value of the property. Whatever that be, since the only contention that is seriously raised is that a portion of the property alone need be proclaimed and sold, I am of the view that an opportunity can be granted (even though the bank has not been served with notice) to the petitioner for identifying a purchaser who will pay the entire balance decree-debt for a portion of the property.

4. The order of stay granted will continue for a period of six more months from today on condition that every month the petitioner remits a sum of Rs.25,000/- commencing from the 1st of July, 2007. It is open to the petitioner to identify a purchaser for any portion of the properties in question in the meanwhile who will be prepared to pay the entire balance amount towards the decree-debt. Once such purchaser is identified, the petitioner will take him to the bank and after obtaining concurrence of the bank, the court below will be moved for permission to have a private sale of that portion of the property. The court below will consider that application favourably and ensure that the prospective purchaser pays the balance consideration in full and final settlement of the decree-debt due to the bank.

The Writ Petition is disposed of as above. No costs.

tgl **(PIUS C. KURIAKOSE, JUDGE)**